

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

March 25, 2003 Session

**SANDRA KAY TERRELL V. STERLING PLUMBING GROUP
KINKEAD DIVISION**

**Direct Appeal from the Chancery Court for Obion County
No. 22,374 Michael Malone, Chancellor**

No. W2002-01489-WC-R3-CV - Mailed October 16, 2003; Filed November 21, 2003

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The employer in this workers' compensation case has appealed the trial court's decision awarding the claimant twelve percent (12%) permanent partial disability to both arms. This award was made despite the absence of any impairment rating to the left arm and despite the absence of medical evidence establishing permanency of any injury to the left arm. The Panel has concluded that the evidence preponderates against the trial court's finding of a work-related injury to the left arm. Accordingly, we reverse the trial court's finding as to the left arm, but we affirm the trial court's award of 12% permanent partial disability to the right arm.

**Tenn. Code Ann § 50-6-225(e) (1999) Appeal as of Right;
Judgment of the Chancery Court Affirmed as Modified; Case Remanded.**

D.J. ALISSANDRATOS, Sp.J., delivered the opinion of the court, in which JANICE M. HOLDER, J. and ALLEN W. WALLACE, SR. J., joined.

Steven Maroney, Jackson, Tennessee, for the Defendant-Appellant, Sterling Plumbing Group Kinkead Division.

Jay Degroot, for the Plaintiff-Appellee, Sandra Kay Terrell.

MEMORANDUM OPINION

FACTS

This workers' compensation appeal has been referred to the Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The employer, Sterling Plumbing Group Kinkead Division ("Kinkead"), has appealed from the action of the trial court in awarding the employee, Sandra Kay Terrell ("Terrell"), permanent partial disability benefits of 12% to both arms.

Terrell was 37 years of age at the time of trial and is a high school graduate. She had been employed with Kinkead since 1998. Terrell sustained a compensable injury to her right arm on March 17, 1999. However, the claim in this case is for both the right and left arms.

After the injury Terrell first saw Dr. Peter Lund, who performed an examination and testified that a carpal compression test and Phalen's test indicated probable carpal tunnel syndrome. After undergoing surgery for carpal tunnel release on the right arm in July of 1999, Terrell reported that the numbness and tingling in her right arm had resolved. Terrell then complained of left wrist and elbow pain. Dr. Lund performed a nerve conduction test in March of 2000 that was normal. He later diagnosed an ulnar nerve aggravation problem in her left arm. Dr. Lund did not think surgery would be beneficial to Terrell. Dr. Lund did not assign any impairment rating to the left arm, but he assigned a 2% partial impairment rating to the right arm.

Terrell was sent to Dr. Bourland for a second opinion, but he did not find anything specific to treat.

Terrell also saw Dr. Boals for an independent medical evaluation. He opined that she had residual effects from the right carpal tunnel release and suspected mild cubital tunnel syndrome and mild lateral epicondylitis on the left side. Dr. Boals opined, however, that the left arm symptoms were not significant enough to rate. Dr. Boals assigned Terrell a 10% permanent partial impairment rating to the right arm and no impairment rating to the left arm. Dr. Boals said that Terrell should avoid heavy gripping and repetitive work with both arms.

No doctor explicitly testified that Terrell's injury to the left arm was permanent in nature, and no doctor assigned an impairment rating to the left arm. However, the trial court concluded that by a preponderance of the evidence Terrell had established permanency of the work-related injury to both arms. The court stated that there is an assumption of permanency when a doctor provides restrictions without making the restrictions temporary in nature. The court concluded that Terrell had sustained a 12% permanent partial disability to both arms.

STANDARD OF REVIEW

Our review is de novo upon the record accompanied by a presumption that the trial court's findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

ANALYSIS

This Panel would first like to compliment the learned Chancellor on his helpful and thorough findings of fact and conclusions of law.

This Panel concludes, however, that evidence does not preponderate in favor of a finding that Terrell sustained a 12% permanent partial disability to both arms. Although Dr. Lund opined that Terrell had an ulnar nerve aggravation problem in her left arm and Dr. Boals provided restrictions to her left arm, neither doctor found the injury significant enough to rate. In cases where medical evidence establishes permanency, the failure of a medical expert to assign an impairment rating to that injury does not justify the denial of compensation. Corcoran v. Foster Auto GMC, INC., 746 S.W.2d 452, 457 (Tenn.1988). In this case, benefits cannot be awarded under Corcoran because no permanent disability has been established by the medical evidence. This Panel disagrees with the trial court's assertion that unless a doctor says that restrictions are temporary, they are assumed to be permanent. We have found nothing to support this contention.

This Panel agrees with the trial court that the lack of medical proof makes this case a very difficult one for the court to evaluate. It would have been better if the doctors had been specifically asked if Terrell had a permanent injury to her left arm.

The absence of medical proof regarding the permanency of any injury to the left arm and the absence of an impairment rating to the left arm precludes any finding of disability to it. We therefore reverse the portion of the judgment of the trial court that allows recovery for the left arm. However, we find the evidence does not preponderate against the award of 12% permanent partial disability to the right arm, and we affirm that portion of the judgment.

CONCLUSION

The judgment of the trial court is affirmed, as modified. This case is remanded to the trial court for proceedings consistent with this opinion. Costs on appeal are taxed one-half to the appellant, Sterling Plumbing Group Kinkead Division, and one-half to the appellee, Sandra Kay Terrell.

D. J. ALISSANDRATOS, SP. J

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed one-half to the Appellant, Sterling Plumbing Group Kinkead Division, and one-half to the Appellee, Sandra Kay Terrell, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM